



VACATUR OF CONVICTIONS FOR VICTIMS OF SEX TRAFFICKING

Study Highlights

January 2021

Sex trafficking victims often lack the criminal intent to commit certain crimes related to their trafficking. Vacatur provides a remedy for victims to remove certain convictions from their criminal history records and a means to alleviate the collateral consequences of those convictions.

45 states provide conviction relief for victims of sex trafficking:

- 26 states vacate convictions
- 13 states expunge convictions
- 6 states seal convictions

5 states, including Virginia, provide no conviction relief for victims of sex trafficking.

All 45 states provide conviction relief for prostitution offenses. However, states vary greatly in terms of which other offenses qualify for relief:

- 17 states: prostitution offenses only
- 15 states: broad ranges of offenses
- 9 states: specified offenses
- 4 states: all offenses

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What is vacatur?

Vacatur is the removal of a criminal conviction as if the person had never been found guilty of an offense. The Virginia Code currently allows convictions to be vacated under the writs of actual innocence statutes (Va. Code §§ 19.2-327.2 *et seq.* and 19.2-327.10 *et seq.*).

How can vacatur help sex trafficking victims?

Vacatur is a mechanism which can provide conviction relief to sex trafficking victims who lacked the criminal intent to commit certain offenses related to their trafficking. This conviction relief can mitigate the collateral consequences of certain criminal convictions directly related to their sex trafficking. Collateral consequences can include bars to employment, housing, education, and financial assistance. Vacatur can thus assist victims in stabilizing their lives and establishing themselves outside of the commercial sex industry.

Study Findings

During a 2018 study on sex trafficking by the Crime Commission, staff found that sex trafficking is a serious problem in Virginia; however, due to the dynamics of the commercial sex industry, a lack of data, and underreporting, the full scope of the problem is difficult to determine. Staff further found that victims of sex trafficking are often vulnerable, struggling with dysfunctional families, past abuse, trauma, drug dependence, and low self-esteem. Sex traffickers use these vulnerabilities to recruit victims into the commercial sex industry and frequently recruit juveniles.

Why are sex trafficking victims frequently treated as criminals?

Sex trafficking victims engage in a variety of criminal activity as a result of manipulation, coercion, deception, force, or intimidation by their trafficker. These victims frequently form a bond with their trafficker, and therefore do not see themselves or self-identify as victims until after they have left the commercial sex industry. These dynamics cause significant challenges in identifying victims, and therefore the criminal justice system often treats victims of sex trafficking as criminals.

Crime Commission Legislation

Crime Commission members unanimously endorsed legislation for introduction during the 2021 Regular Session of the General Assembly to:

- Create a petition-based process for victims of sex trafficking who were convicted or adjudicated delinquent of prostitution, solicitation of prostitution, or maintaining a bawdy place to have their conviction or adjudication vacated by a circuit court; and,
- Divide Virginia's prostitution statute (Va. Code § 18.2-346) into two separate Code sections to more clearly distinguish between prostitution and solicitation of prostitution offenses.